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OFFICE OF PETITIONS

In re Application of :
Zimmerman et al. :
Application No. 09/783,671 : DECISION ON PETITION
Filed: February 14, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 112174-009CIP :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 7, 2012, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. Also, **the status of each nonprovisional parent application (if it is patented or abandoned) should also**

be indicated, following the filing date of the parent nonprovisional application. See MPEP Section 201.11, Reference to Prior Nonprovisional Applications.

In addition, the amendment should specify *where* in the specification the benefit claim should be inserted.

The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.


The rule at 37 CFR § 1.78(a)(3) requires a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR § 1.78(a)(3). If this is not a correct reading of the statement appearing in the petition, petitioners should promptly notify the Office.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment, which states the status of each nonprovisional parent application application and directs entry of the substitute amendment to the first line of the specification, are required. No additional surcharge/fees are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebs/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3230.

A handwritten signature in black ink, reading "Shirene Willis Brantley". The signature is written in a cursive, flowing style.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions